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LAND-TENURE IN ANCIENT INDIA.

SINCE the days of Sir Henry Maine the glory of the Hindu village-community has well-nigh departed. Ten years ago it was still taught that the "primitive Aryan," an individual with whom we are less familiar now than formerly, held only a limited right of possession in his native soil. In the idyllic picture of the village-community drawn for us in 1887 by a learned German scholar,¹ the village-elder sat "under a great tree" (the species is not certain) before the collected village, and administered simple justice, dividing among his kindred shares of land and water, while with the aid of assistant assessors he imposed equitable taxes. He was at once the grandparent, the king and the co-heir of the village in what had been left to them all by preceding generations.

Communal ownership of land was at that time believed by most scholars to have been an Aryan institution, common to the primitive German and Hindu alike. It was, therefore, with the feeling of being very heretical that I ventured, on the basis of a merely literary acquaintance with the social conditions of ancient India, to state in 1888 that "practically the ownership of land is vested in each hereditary occupant; his right is secured by title;"² and to say that there was need of a fresh investigation of Indian village-communities and Hindu land-tenure.³ At that time I did not know that Mr. Baden-Powell's wide researches into present conditions had concentrated themselves upon this very problem and were leading him to the same general conclusion, which he has now sought to establish more firmly by recasting the material. In *The Indian Village Community* the perfected theories of the author of *Land Systems* are explained at length. These are the more valuable as they have been propounded solely from the point of view of the

¹ Leopold von Schroeder, *Indiens Literatur und Cultur*, p. 414.

² *Journal of the American Oriental Society*, vol. xiii, p. 88.

³ *Ibid.*, p. 57.

practical observer of things as they are, and because Mr. Baden-Powell not only disdains literary evidence, but also is fairly ignorant of it ; while I, at the time I wrote, knew nothing of present conditions. That from two essentially different sources we have drawn substantially the same result is surely an argument in favor of its probable correctness.

But as I cannot quite agree with all that is taught by the author of *The Indian Village Community*, and as my divergent views are in part not theoretical but historical, it may not be inopportune to inquire whether a certain familiarity with the literature is not of some use to the historian. We may indeed claim that the ritualistic works called Brâhmanas are not trustworthy ; but it is a different matter to say that such and such statements are not found in the literature because we do not know where to find them. To combat irrefutable facts by denying their existence is not to win the case.

Happily, however, these strictures apply only to a detail or two in Mr. Baden-Powell's comprehensive work, albeit he has based on these details a tottering superstructure of unnecessary theory. But it is not for the pleasure of controversy that I think the whole question deserves to be restated from the literary and historical side. In the article already alluded to, the theory of land-tenure was merely an incident ; and all that I then had to say on the subject was contained in the suggestion that the theory which obtained as I wrote would not square with the facts. Sir Henry Maine died in the same year that my article was published ; and, strangely enough, no follower of his ever undertook to see whether his views were corroborated by literary evidence. Still more remarkable is the fact that no Sanskrit scholar has ever sought to trace through the literature the recorded growth of Hindu institutions. But the literature is so vast that few have compassed it or possess even a superficial knowledge of what lies apart from their special field of research. The outline here presented is a first attempt to sketch the growth and change of land-tenure as these are shown in the literary monuments of Aryan India, from the earliest Vedic period to about 500 A.D. I shall be as uncon-

troversial as possible, as I do not wish to convey the impression that I regard Mr. Baden-Powell's monograph as entirely erroneous. On the contrary, to my thinking, the general proposition that the Aryans of say 1000 B.C. were not grouped in village-communities (using this word in its strict sense) is irrefragable. What strictures I have allowed myself concern subsidiary but unavoidable questions.

I would say one word more before beginning my historical sketch. Writers on economic conditions in India are still prone to cite from the "early law" of the Hindus; and unfortunately, to many who know other things well but Sanskrit only by reputation, "early law" is synonymous with the law book of Manu. Now, Manu may be cited with discretion but not at haphazard as an authority on early law; for he stands to early law much in the relative position of Justinian, where the old may be found but where not all that is found is old. Before Manu there are a number of earlier law-writers known as authors of law-manuals, *Sûtras* (700–300 B.C.). Behind these again lie all the legal provisions of the (informal) *Brâhmana* age, and back of these again the Vedic Hymns. It will readily be seen, therefore, that Manu is not synonymous with primitive or even very early Aryan.

No very definite statements in regard to land-tenure can be gathered from the earliest literature. The Vedic Hymns, the oldest literary monument, show that different tribes at different periods are involved in any data that may be collected. At one time a poet speaks of his people as advancing "from a far land," searching for "pasturage and water"; at another, a singer is interested mainly in agriculture, and prays for rain and a good harvest. The people were in part nomadic: all together they sought fresh lands; "give us wide pastures" is their cry. But only an occasional prayer for meadow-land to be bestowed on one worshiper would lead us to lay stress on this poetic phraseology. The contrast is there—on the one hand, between the sole petitioner and the cry of land for all; on the other, between the grazing and agricultural population—but only the latter antithesis is pronounced. Taken as a whole, the stage repre-

sented is, if not wholly nomadic, at least generally that of a people devoted to cattle rather than to the plough. In the whole of the Rig-Veda there are less than a dozen references to ploughing, while those to grazing are innumerable. Landed property is gained by conquest, and the "winning of fields" or "conquest of fields" is recognized as the usual aim of battle—as much so as "the conquest of cattle." The booty of such conquests, as is expressly hinted, was distributed by shares. At a coronation the prayer is: "Grant him, the king, a share in village, horses and cattle." But the king distributes, as is said in another hymn: "From the height of sovereignty do thou, terrible one, give us a share in goods." Private ownership in land is plainly expressed, not only by the image of the gods measuring time with [their] staff "like a field" (which Mr. Baden-Powell translates incorrectly, through the medium of a German version, as "a man measures a field with a staff of reed"), but by other passages where ownership is really implied. Thus, a young woman prays that something may grow on her father's head and on [his] plough-land; and a gambler cries that a god has warned him to go and plough the plough-land for a living instead of playing with dice, which leads only to regret as he looks on the happy homes of others.

The "heads of families" casually mentioned as grouped around the "active lord of the host" may possibly imply joint families; but the evidence for this is certainly very vague. On the other hand, there is direct evidence, as I shall show below, that a joint family in the legal sense was not recognized; while the indication of separate ownership of fields apparent in the Rig-Veda is substantiated by a passage in the Atharva-Veda, where a man prays the god to bless "his men, his cattle, his horses, and his field." Separate houses are of course to be assumed, but they are also implicitly established. The kings give to their priests great gifts of thousands of cattle, not as part of a common possession but as their individual property to be driven off to their own home. But the great owner of property, the "wealth's wealth-lord and people's people-lord," as the Atharva-Veda calls him, is the king. This wealth he

wins "from foe and friend"; but there is nothing at this period to indicate indubitably in whom is vested the ownership of land. The people are taxed, and long before the close of the Vedic period the tax is obligatory.

The domestic priest of the king was the first, as far as the records show, to be the recipient of a gift of land from the king. In one of the earliest Brâhmanas, the first prose literature, the king is directed to give this priest "a field"; but we shall look in vain through the still earlier literature of the Hymns for any such donation. In the Vedic Hymns cattle, horses, slaves, clothes and jewels are given in profusion, but nowhere is there any mention of a gift of land. When thus given, however, in the second period, the land may not be alienated. Even if the king at another time should give all his land to another priest, that piece which he has formerly given to the first priest is not included in the later donation. The prototype of those extraordinary gifts (so frequently mentioned in later literature), whereby a king gives all his land to a priest, is found in the Brâhmanas. As Mr. Baden-Powell seems to think that all such stories are late, — and, in fact, he seems to know only of the latest, — it is well to remember that, so far as such stories affect the question of land-tenure, they are really a product, not of a late age, but of the Vedic period in its second stage. Such gifts in that age are, however, rare as compared with the succeeding period.

A general view of the intermediate age, represented by the later Vedas and the Brâhmanas, shows that, when a king with the help of an ally conquers a third king, he "goes shares" in the booty with his ally; that the country is governed by the sovereign through local officers; that the *grâmanî* or "leader of a host" of the earlier period has now become a "village headman"; and that the king bestows land for a place of sacrifice only when he has been "begged" for it by the priests. An interesting difference of terminology in the kingly title shows that the notion of "emperor" or supreme king over feudal chiefs is already current; "lordship and over-lordship" — or, more strictly, "mastery and over-lordship" — are now the king's; and he is called "the one owning all the land" as

a regular imperial title. On this point also I am compelled to differ from Mr. Baden-Powell, who thinks that the idea of land ownership vested in the crown is a late growth. On the coronation of the king, in distinction from the office implied in the earliest (Indo-Iranian) title of "protector of the people," it is expressly stated that the king has become "the protector of the priest and the devourer of the people." This is no isolated phrase; nor are the people, literally "the clans," other than his own. It is said again and again that the farmers are "the food of the nobility." In a characteristic passage of the Aitareya Brāhmaṇa it is said that the peculiar function of a priest is to "take gifts," while the peculiar function of the Vaishya (peasant-farmer caste) is "to be devoured by priest and nobleman." Even in this early age (1000-800 B.C.) the only difference recognized between the slave and the farmer is that the latter may not be killed at pleasure, because he is of Aryan blood.

I submit that no peasant proprietor, openly described as fit only to be robbed, was likely to have a very secure hold of his landed property. The same text I have quoted says, indeed, that the nobleman's power has its roots in the earth, but this may be only a poetical phrase. As to the possibility that the peasant-farmer could defend himself against aggression on the part of a priest, a Vedic text had already settled the matter by saying that in any dispute between a priest and a layman the judge [the king] must always decide in favor of the priest. Another indication that the king's sovereignty extended over all save the priest is given by the circumstance that a priest's house is recognized as being "outside the realm." Thus there is a barbarous old ceremony (into the details of which it is not necessary to go) in which at a certain time a certain woman is "driven outside the realm." As realms grew larger, this became inconvenient, for the woman had to be brought back again; so the device was adopted of making her go into a priest's house, "for this lies outside of the king's *āshā* [power]" and so is out of the realm.

Another question arises at this point; and it is perhaps the one that Mr. Baden-Powell has answered most unsatisfactorily,

when he claims that the Aryan Vaishya was an agriculturist only incidentally and chiefly by proxy, being really a trader. He bases this view on the fact that in Manu's (late) law book the Vaishya seems to be principally occupied with trade. In the course of his argument he is here led to make one or two statements of fact, the truth of which cannot be determined upon the slender evidence adduced, and which a closer acquaintance with Sanskrit literature would probably have modified.

The subject is really of prime importance, owing to the use to which Mr. Baden-Powell puts his results. He draws from it the conclusion "that the upper classes of Aryan origin had little feeling for agriculture, and that India does not owe to them either the introduction of settled cultivation or (directly) any particular policy or principle of land ownership."¹ Mr. Baden-Powell thinks that agriculture was performed only by the humblest classes of Aryans, scarcely differentiated from the original inhabitants, and is much surprised that he cannot find, in accordance with his theory, any mention of the Shûdra (slave) as an agriculturist.

This is rather a startling statement, in view of the fact that, as I have already mentioned, agricultural labor is alluded to in the very earliest Aryan literature. In the Brâhmana literature also, although one does not expect to find many allusions to agriculture in books devoted to the exposition of a sacrificial liturgy, ploughing is very often mentioned and the processes of the year's work in the plough-land are all described. Then turning to the Sûtras, or earliest manuals of law, some of them much older than Manu, we find, not only constant allusion to agriculture, but plain evidence of the fact that Vaishyas were particularly agriculturists, and that members of the warrior caste and of the priest caste were very apt to adopt the same occupation. It is surely, therefore, a grave slip to say, as does Mr. Baden-Powell: "Whatever be the true date of the *Laws of Manu*, we have no earlier literary mention of agriculture, after the Vedic Hymns."² As a matter of fact, we can trace almost step by step through the Sûtras the gradual change

¹ The Indian Village Community, p. 192.

² *Ibid.*, p. 190.

from cowboy and agriculturist to trader in the case of the Vaishya. Long before the time of Manu's law book, had arisen the famous *ahimsā* doctrine of non-injury to living creatures ; and the objection to agriculture on the part of the priest is based expressly on this ground in the law books. But, as to-day and in the last century in Rājputāna, so in ancient times recourse to agriculture was the first thought on the part of the upper castes, and agriculture was the usual occupation of the third estate. It is true that the upper castes had no "feeling" for agriculture, but noblemen and priests, as a general thing, have feeling neither for agriculture nor for trade.¹ In India the Vaishya was first a tender of cattle ; then from the Vedic period onwards an agriculturist or cattle-man ; and, lastly, by preference a trader. But, on the other hand, traders existed in the Vedic age, so that the very gradual change of occupation of the caste as a whole is the more remarkable, if Mr. Baden-Powell is correct. There is, again, another factor ignored in Mr. Baden-Powell's work. "Vaishya" was the old inherited caste name and could not be dispensed with. It had to cover various new livelihoods in the law books. But in the epic, which comes next in sequence, trader and Vaishya are sundered outright, grouped as two classes ; and here Vaishya, in contradistinction to trader, means agriculturist. The epic, moreover, in numerous passages intimates that, when a Vaishya is spoken of, it is an agriculturist who is intended. Thus, in the words of the Goddess of Bliss : "I dwell in the home of the Vaishya, the one devoted to agriculture" ; and again : "This is the expiation of a Vaishya, to give part of his crops to a priest." The same work contains a list of priests who lead irregular lives : "Some [priests] practice agriculture and tend cattle ; some rely on begging," *etc.* Sometimes the word connotes simply a cow-herd ; sometimes it includes the trader ; but it never indicates the trader alone. But not to quote more, though it would be

¹ Kings are, however, particularly enjoined to see to the interests of the agriculturists. In the epic the king is expected to make reservoirs and distribute grain to needy farmers, particularly the former, as in the sage's anxious inquiry : "I trust, my lord king, that agriculture does not depend on the gods in your kingdom" (that is, I trust you have irrigated the country).

easy, I will conclude this paragraph by saying that the town Vaishyas were usually guild men, and became naturally much more important economically than their stupider brothers who stayed on the farm.¹ To deduce from such evidence the sweeping conclusion that India owes agriculture and every settled principle of land-tenure to the Dravidians seems to be a good example of the result of neglecting literary sources. There is in reality no evidence whatever to show that the Aryans learned agriculture from the Dravidians.

The appointment of officers over various parts of the kingdom as subalterns very likely dates back to the Vedic period; and as Mr. Baden-Powell says of the officers in Manu's law book: "These were in all probability 'over-lords' simply, who drew revenues from the landed proprietors." In one of the Upanishads it is said in a simile: [The vital breath commands the other breaths] "just as a *samrāj* or universal king commissions his officers, saying: Be thou over these villages or those villages." But in many cases these villages do not seem to have had much tenacity as regards land; nor do they appear to have been especially corporate. When, as is related in a Buddhist text, one village is annoyed by dacoits, it is regarded as the most natural thing in the world that the village should be moved—that it should even divide into two bodies, one part going to one place and the other to another.

Now this instability of the village is characteristic of the eastern part of India. From the east comes the account of the division first mentioned; and similarly it is in the later epic, which is probably an eastern addition to the western poem, that the king is warned continually to be kind to the agriculturists, as they are liable, if displeased, to leave their villages at any time and to seek homes elsewhere, even in the realm of his enemy. This, too, is corroborated by the proverb-wisdom of the period: "A wife and a home—these are secondary matters; one can find them everywhere."

¹ But even trading town Vaishyas kept up agricultural pursuits, as is shown in many Buddhistic stories. See also the writer's articles on Ancient and Modern Hindu Guilds, *Yale Review*, May and August, 1898.

The gift of whole villages on the part of a king is a noteworthy feature of early Buddhist literature (*c.* 300 B.C.), as it is of the epic. It is foreshadowed, as we have seen, in the tales of the Brāhmanas. By what tenure these lands were held is not so certain as Mr. Baden-Powell thinks. But before describing the terms of these grants I must touch on another topic.

The joint family, which is the basis of the village-community, is the ideal of the later age, but not an ideal which is favored by the jurists. In the later law it is held to be more meritorious not to keep the family united, the principle being that of the so-called "increase of religion." That is to say: the more householders, the more sacrifices; the more sacrifices, the more spiritual merit (and the more gifts to priests). But the joint family stands in a poetic ideal light in the eyes of the epic poets. This tends to show on the one hand that it was old, and on the other that it was no longer customary. An example or two will illustrate this. An elder brother, who has all to gain and nothing to lose by keeping up the joint family, reproves his younger brother, who demands partition of the family estate: "Many through folly desire partition, but such divided heirs are weakened before their foes." Again, in plaintive retrospect of the good old days it is said: "In that age sons did not divide with their father." The strange thing about this is that, according to all the legends and traditions of antiquity, the joint family is unknown: the divided family is the rule. There is, to my knowledge, not a single instance in the mythical accounts of the past, where a father is represented as leaving his property to the family in general or as possessing it in common with them. The historical or legendary evidence, on the contrary, all points the other way.

If, for instance, we turn back to the oldest period of which we have any knowledge, we find in the Rig-Veda a distinct allusion to the fact that, when the father grew old and feeble, he was ousted from his property and his sons divided it among themselves. In the Brāhmanas, again, there are two mythical accounts of Father Manu (not as the lawgiver here, but as the

Adam of the race) and of the division of his inheritance. These differ only in details. One of them, either really the older or at least contained in an older work, describes the fact thus : "Manu divided his property for his sons ; one of them, living elsewhere as a student, he excluded from a share." The other account says : "The brothers excluded from a share one of Manu's sons." In both accounts the property is divided during the father's life. The position of the one son who assumes his father's place is described in the later literature of the Upanishads, where it is said that when a father, thinking he is about to die, bestows everything on his son and that son accepts it, then the father, if he recovers, must live under the son's authority or "wander about, a beggar." But this is a later case of only one son, and affects solely the authority of the father when he has disposed of it ; whereas the earlier tale recognizes each son as special owner of a special share. So, too, in the Yajur Veda is found another indication to the same effect, when it is said : "For this reason they fit out the eldest son with [an extra share of] property," as the sentence must be interpreted according to the context and according to the oldest commentator, who is himself a jurist.¹

Again, in mythology we find constant reference in the Brâhmana period to the "division of inheritance" of the Father-God, whose children, the gods and the devils, "both being children of the Father-God," fight for their respective shares and "enter into their inheritance" by dividing it. In terms of real life this would show that the divided family was the ordinary family through the Brâhmana period. So, when a man has no son, he divides his property between his two wives, according to another well-known story of the same period.

But the marriage hymn of the Rig-Veda indicates that the man takes his bride home and expects her to be mistress of the household, which expressly includes her father-in-law and brothers-in-law. Now this hymn represents, in all probability, a period much older than the mass of Vedic Hymns ; and it

¹ Apastamba's Law Book, ii, 6, 14, 12. The accounts of partition are from the Black Yajur Veda and Aitareya Brâhmana.

would really be consonant with all the facts in the case, if we saw in this unique passage (for "hymns of concord" do not prove anything) a reference to the joint family, though no longer in the "patriarchal" stage. In what way, however, can this be harmonized with the apparently contradictory evidence already adduced? Clearly by the otherwise not improbable assumption that the joint family was already on the wane in the earliest (literary) period. It is for this reason, as it seems to me, that the two forms go theoretically hand in hand at a much later date, as in the law book of Manu and the epic. In the latter, for instance, the same paragraph gives directions for maintaining a family in either way after the father's death. Here the joint family is formally disapproved of, while theoretically it is allowed; but the only case where a really joint family is represented is that of the chief heroes. These, however, are ideal types; and even in their case the separate ownership of a younger brother is distinctly recognized. Thus, in order to give away property belonging to his junior, the head of the family asks the latter's permission; and when this is refused, the younger retains his possessions undisturbed.

When it is remembered, however, that the Aryans of the Punjâb are looked upon by the writers of this epic as outside the Brâhmanic pale, and that many customs lingered among the former which the more advanced Aryans of the "middle district" (around the present Delhi) had long since renounced, it is clear that another element than that of time may be involved. Mr. Baden-Powell seems to think that the Punjâb was as un-Aryan two or three thousand years ago as it is to-day. But the people of the time did not think so. The inhabitants of what is now the Delhi district revile in no measured terms the western Punjâb allies they unwillingly associate with, but it is not even suggested that they are not Aryans: it is merely said that their customs are strange, remote, not in keeping with the more eastern usage of the "middle land." It is therefore possible that the older joint family was retained among those Aryans who, instead of striking southeast with the descendants of the Vedic poets, lingered behind in the Punjâb.

The kind of property "divided" in the ancient tales I have referred to is never land but always flocks. Even the early law books are very reticent in regard to the kind of property to be divided. When partition is expressly spoken of, however, it is in terms of cattle. "Impartible property" is described at length, the list increasing with the lateness of the author. Thus Manu's list includes "a dress, a vehicle, ornaments, prepared food, water [that is, a well], females [slaves], religious property and a path [or pasture]"; while the earlier list of Gautama mentions only water, religious property, prepared food and females [slaves]. Only the late jurists of the fourth and fifth centuries of our era specify houses and lands as partible. But fields owned by individuals are mentioned, not only in the case of a man who clears a piece of jungle and is therefore admitted to be the possessor, but also in the laws concerning the establishment of disputed boundaries. It is therefore the more remarkable that in the laws of inheritance real estate is ignored. The later jurists are, in fact, as careful to give minute rules of inheritance in regard to house and land as are the early jurists to avoid express mention of such forms of inheritance.

The explanation of this odd state of affairs is to be found, I think, in a restriction of the sweeping generalization made by Mr. Baden-Powell, when he states that the early Aryans in India recognized only private ownership in land. Manu's law book itself conceals economic conditions tacitly recognized as existing in other localities, or as having once existed and being therefore legal. An instance of this may be found in the case of the boundary laws. Mr. Baden-Powell says, with a simplicity almost too forced, that "rules for settling boundaries are given"; and then he uses this presentation of the facts as an argument against the view that village holdings are known to Manu, and as a proof of exclusively "private ownership."¹ It is doubtless true that Manu recognizes boundaries of private estates; but it is quite as important to notice that he not only

¹ The Indian Village Community, p. 207. In the same author's *Land Systems* (vol. i, p. 227), the wording is "boundary of estates or holdings."

recognizes boundaries of villages also, but devotes to the latter his chief care. In fact, the whole subject of boundaries in his law book opens with elaborate rules for the adjustment of boundaries between "disputing villages"; and it is only as an after-thought or appendix that he adds to these rules the subsidiary law in regard to "boundary lines of a field, spring, reservoir, garden or house." Previous to the curt statement that in such cases the boundary shall be established "by an appeal to the neighbors," comes a long description of the formalities to be observed "when a dispute has arisen between two villages." This description extends over seventeen verses and closes with the statement that "as the witnesses declare, so shall the boundary be between the two villages."

It is evident to any one familiar with the style of the Hindu law books that two arrangements are here put side by side : the first, lengthy, ornate, precise, in regard to the boundaries of villages ; the second, an appended and apparently late statement in regard to fields. In the former case, according to the commentator's reasonable explanation, there are two advocates or special pleaders, each representing one of the two villages, but the whole village takes part in the proceedings. The rule of Vasistha, who quotes Manu and is not a very early writer,¹ speaks only of the second kind of boundary. Still more noteworthy is the absolute inversion of the order in the still later law book of Yājñavalkya. Here the boundary rule is applied first to private fields and then to "gardens, villages and reservoirs." Virtually, the elder lawgiver says : "This is the law in regard to the disputed boundaries of villages," and then adds : "This law applies also to fields." The later jurist says : "This is the law in regard to fields," and then adds : "This law applies also to villages" — rather a significant alteration.

It is of course true that this passage does not prove com-

¹ The law book of Vasistha is a mixture of prose and verse, of old and new. Like the later writers, he prescribes, for instance, that a proof of ownership is a *lekhyā* or "writing," and enjoins the use of documents in case of disputed ownership (xvi, 10, 14). The earliest Sūtra lawgiver, Gautama, has no rule at all in regard to boundaries, though he recognizes enclosed fields and private ownership in land.

munal ownership in either village ; but the inference from the prior description would not seem to be that the ownership spoken of is one of private fields ; and it is certainly going a little too far to cite the passage as evidence of exclusively private property. The garlanded witnesses, marking out the lines in the presence of "all the inhabitants," would seem rather to point to the recognition of proprietary rights in those inhabitants as a body. Further, we hear of the much despised "priest of a whole village," who, like the "priest of a corporation," apparently officiates for a corporate body.

The habitat of the joint-family village seems to be in the agricultural districts of the Punjâb. It is therefore interesting to notice that the people who are spoken of in the early Brâhmana period as living "without kings" are inhabitants of the northwestern Punjâb. The epic, moreover, speaks of a people whose only name is "villagers" or "village-headman people." They are great warriors and "live on the banks of the Indus."¹ These points will perhaps be worth noticing in any future treatment of the subject. To my thinking, Manu, whose law book originated in what is now the southeastern Punjâb, stands between two geographical and historical extremes ; and in his work, as in the early epic which came from the same district, there are traces of two forms of holdings and two forms of inheritance and family.²

It is a very early rule that in lieu of regular heirs all property goes to the crown. Does this mean that the right to it reverts to the crown ? Such is the Hindu's own explanation. But Mr. Baden-Powell says that no ancient Hindu writer can be quoted for the idea that the state is considered superior owner of the soil, and asserts that the only authority for this idea is a modern digest of the last century.³

¹ People living "without kings" are frequently mentioned in the epic, and always as if they were well known though much despised.

² I may add that Mr. Baden-Powell's notion (in support of his theory) that Manu's law book comes from Oudh is utterly without a basis in fact. Manu praises only the Delhi district. The eastern districts he knows only as the home of impure castes.

³ *The Indian Village Community*, p. 209.

Now Brihaspati, whose code was written about 400 A.D., says that the reason why the king becomes heir to property left without another heir [male issue, wife or brother] is that he is the "owner of all"; and Nārada, who wrote his code about the same time, says that real estate held for three generations cannot be estranged except by the king's will. Again, Brihaspati, who lived when the village owned by one man was customary, says in speaking of such a village: "Suppose land is taken from a village belonging to one man and transferred to another man either by [the action of] a river or by the king, [to which man does it belong?]. It belongs to him who gets it from the river or from the king." The only reason is that the king is the supreme owner of the land.

In the earlier period the question as to who owns the land is not discussed, but in every reference to the subject it is said, as if it were simply a matter of course, that (with a constant exception in the case of priestly possessions) the king is the owner of everything. He is not only the over-lord, but he is the over-lord as owner. Thus, as owner simply, he gets half of all treasure-trove; and that this is the true explanation is evident from the fact that, when the king gives a village to a priest, he gives him as owner the right to all the treasure-trove — that is, the king's ownership has passed to the finder, who is now the owner. In regard to the interpretation of the legal passage I do not stand alone. Professor Bühler, of Vienna, one of the foremost scholars in this line, declared long ago that he regards the rule just cited "as a distinct recognition of the principle that the ownership of all land is vested in the king." Mr. Baden-Powell has, if I may say so, let the "over-lord" theory run away with him, and seems to be blind to the fact that this word is also applied to those who are in no sense political over-lords, but are presented with villages to tax or sell at their own pleasure. The epic also has many passages showing that, while the priest claimed a divine right to possess everything in theory, he has abrogated this in practice, and in consequence everything belongs to the king to give. "Only a warrior [king] may give land to a priest," it is said; and, con-

versely, it is said again : " Land may be taken possession of only by a king." " It is a Vedic utterance that the king is owner of the wealth of all save the priests," is another statement made alike by law and epic. Furthermore, the epic kings are perpetually admonished by the sages not to do wrong to the people ; but though various sins against them are enumerated as possible, — such as oppressive *corvée*, over-taxation and the like, — it is not once hinted that a king should not rob his subjects of land. If the land were regarded as the peasant's own, we should surely meet somewhere in the vast epic literature and wide range of legal Shâstra some such note as we hear in the modern peasant's defiant cry that " the king owns the tax, but the peasant owns the land." It is not till the fourth or fifth century of our era that the king is admonished " not to upset the two fundaments of the peasant's life, his house and field."¹ As I have already observed, in the period just preceding this the inhabitants of the country are represented as easily moved to leave their homes and go elsewhere. They are, in fact, especially told to do so, if the soil or the king is " bad." " One should leave his king and native place if they are bad [poor]; and take that to be his country where he can earn a living," is an epic dictum.

Nor are the laws of this period regarding the rights of kings contradictory. The king is declared to be the " preserver and destroyer " of his people, who are still, as of old, to be " devoured " by taxes or otherwise, as the king sees fit. When he needs it, " the king may take all the possessions, small and great, of those who break the ten commandments [of morality]," and " any possessions of any one save a priest." The king further gives and gambles away fields, villages and whole districts at pleasure. Nor is such a gift of a village a presentation of the right to tax alone. The recorded copper-plate grants of the first centuries after Christ explicitly declare of what nature was this ownership. The grantee is made absolute owner, not relative, as in the case of an over-lord. We must, I think, interpret the *agrahâra* land-grants mentioned in the epic in the light of those actually extant.

¹ Nārada's Law Book.

But how else should we interpret the power and ownership of kings in the light of such callous remarks as meet us in the literature? One passage of the epic declares : "All property is the result of conquest and robbery. The best property is that which one gets by taking it from another. When kings conquer earth, they speak of the land just as sons do of their father's property and say : 'This land belongs to me.'" Of the "king-devoured people" the king himself was absolute master, and it seems almost unnecessary to urge that the land was his or his subjects', in accordance with the tyrant's will. Sages admonish, but the kings steal and give and take as before. To them in their power there was but one rule — that enunciated again as a proverb in the epic : "To the mighty all is proper ; to the mighty all is right ; to the mighty all is their own."

In the preceding paragraphs I have referred to the growth of land-giving. It begins with a kingly gift of a field to a priest. The early law does not approve of such gifts, but the later law praises them. The epic extols them as in the highest degree meritorious. The practice appears to have grown up in the large eastern kingdoms and is a feature of Buddhism. The epic says emphatically that all property belongs to the king "and to no second person" ; while it mentions several cases of *agrahāra* land-grants, though it does not know the copper-plate grant, which appears first in the law book of Yājñavalkya. These grants, as described in the epic, are made either to priests or to personal friends of a king or queen. Land-giving on a large scale is called an "earth-sacrifice." In these cases the recipients become actual owners, not over-lords.

The bearing of these facts on the question of village-communities is patent. The land was not given to villages but to individuals. The villagers themselves might be taxed simply or removed at the owner's pleasure. At the same time, there are not lacking indications that Aryan village holdings were recognized.

E. WASHBURN HOPKINS,

YALE UNIVERSITY.